

FILED

AUG 15 2011

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
DELTA DIVISION

DAVID CREWS, CLERK
BY [Signature] Deputy

RANDY KEITH SMITH,
Plaintiff

v.

EQUIFAX INFORMATION SYSTEMS
LLC., EXPERIAN LLC, TRANS UNION
LLC, FIRST PREMIER BANK, LLC, CITI
BANK (CITI GROUP), CAPITOL ONE,
AT-T BELL SOUTH, T-MOBLIE,
NATIONAL ASSET RECOVERY
SERVICES INC., FIRST NATIONAL
COLLECTION BUREAU, ASSET
ACCEPTANCE,
Defendants

Case No. 0:11CV-171-WAR SAA

DEFENDANT TRANS UNION LLC'S NOTICE OF REMOVAL

COMES NOW, Trans Union LLC ("Trans Union"), and files this Notice of Removal pursuant to 28 U.S.C. §1446, and in support thereof would respectfully show the Court as follows:

A. PROCEDURAL BACKGROUND

1. On or about March 23, 2011, Plaintiff Randy Keith Smith ("Plaintiff") filed a Complaint in the Circuit Court of Desoto County, Mississippi, Case No. CV-2011-091-GCD ("State Court Action") alleging violations of the Fair Credit Reporting Act (15 U.S.C. § 1681, *et seq.*) as well as common law claims of defamation against Equifax Information Services, LLC ("Equifax"), Experian Information Solutions Inc. ("Experian"), erroneously sued as Experian LLC, First Premier Bank, LLC ("First Premier"), Citi Bank (Citi Group) ("Citi"), Capitol One ("Capital One"), AT-T Bellsouth ("AT-T"), T-Moblie ("T-Mobile"), National Asset Recovery Services Inc. ("National Asset"), First National Collection Bureau ("First National"), Asset Acceptance ("Asset"), CBSC ("CBSC") Receivables Performance Management ("RPM") and Trans Union.

2. Defendants Trans Union, Equifax, Experian, T-Mobile, RPM, National Asset, and Asset Acceptance were served with the Complaint on July 14, 2011. Defendant Citi was served with the Complaint on July 21, 2011. Defendant Capital One learned of the lawsuit on July 18, 2011, but has not been properly served. Further, "AT-T" was improperly named in the suit, has not been properly served, and attempted service on "AT-T" was denied. Plaintiff has settled all claims with National Asset and RPM. As of the date of the filing of this Removal, upon information and belief, Defendants First National, First Premier, and CBSC have not been served with Plaintiff's Complaint. This Notice of Removal is being filed within the thirty (30) day time period required by 28 U.S.C. § 1446(b).

3. The time period for filing a responsive pleading in the State Court Action has not expired as of the filing of this Notice of Removal. No orders have been entered in the State Court Action as of the filing of this Notice of Removal.

B. GROUNDS FOR REMOVAL

4. The present suit is an action over which this Court has original jurisdiction pursuant to 28 U.S.C. § 1331 and may be removed to this Court by Defendant, pursuant to the provisions of 28 U.S.C. § 1441(b), as it is a civil action founded on a claim or right arising under the laws of the United States. Removal is thus proper because Plaintiff's claims present a federal question, 28 U.S.C. § 1441(b). In the Complaint, Plaintiff seeks damages for Defendants' alleged violations of 15 U.S.C. § 1681, *et seq.*, the Fair Credit Reporting Act. Moreover, any claims based on state law may be adjudicated by this Court pursuant to 28 U.S.C. § 1367.

C. COMPLIANCE WITH PROCEDURAL REQUIREMENTS

5. Pursuant to 28 U.S.C. §1446(b), this Notice is being filed with this Court within thirty (30) days after Defendant Trans Union, the defendant first served with the Complaint, received a copy of Plaintiff's initial pleading setting forth the claims for relief upon which Plaintiff's action is based.

6. Pursuant to 28 U.S.C. § 1441(a), venue of the removal action is proper in this Court because it is in the district and division embracing the place where the state court action is pending.

7. Promptly after the filing of this Notice of Removal, Trans Union shall give written notice of the removal to the Plaintiff and will file a copy of this Notice of Removal with the Circuit Court of Desoto County, Mississippi, as required by 28 U.S.C. § 1446(d).

8. Pursuant to 28 U.S.C. § 1446(a) and Local Rules 5(b), a copy of all process, pleadings, and orders filed in the State Court Action is attached hereto as **Exhibit "A."**

9. Trial has not commenced in the Circuit Court of Desoto County, Mississippi.

10. Because "AT-T", First National, First Premier, and CBSC have not yet been served with Plaintiff's Complaint ("Non-served Defendants"), and since Plaintiff has settled all claims with National Asset and RPM ("Settled Defendants"), the Non-served Defendants and the Settled Defendants are nominal parties whose consent to removal is unnecessary, 28 U.S.C. § 1446(a). See *Balazik v. County of Dauphin*, 44

F.3d 209, 213 n.4 (3d Cir.1995); *Roe v. O'Donohue*, 38 F.3d 298, 301 (7th Cir. Ill. 1994); *Acosta v. Master Maint. & Constr., Inc.*, 452 F.3d 373, 379 (5th Cir. 2006).

11. All Defendants, except the above-named nominal defendants, have received a copy of or been served upon the date of filing this Notice of Removal and consent to the removal of this case. The Joinder in the Removal from Equifax, Experian, T-Mobile, Asset Acceptance, Citi, and Capital One are attached hereto as **Exhibit "B"**.

WHEREFORE, Trans Union LLC respectfully prays that the action be removed to this Court and that this Court assume full jurisdiction as if it had been originally filed here.

This the 15th day of August, 2011.

Respectfully submitted,



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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing document has been forwarded on August 15, 2011, to all counsel of record as follows:

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